Filed 12/17/15 C.R. v. Superior Court CA4/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

C.R., Petitioner, v. THE SUPERIOR COURT OF SAN BERNARDINO COUNTY, Respondent; SAN BERNARDINO COUNTY CHILDREN AND FAMILY SERVICES, Real Party in Interest.	E064578 (Super.Ct.Nos. J253836 & J253837) OPINION

ORIGINAL PROCEEDINGS; petition for extraordinary writ. Steven A. Mapes, Judge. Petition is denied.

Friedman, Gebbie, Cazares & Gilleece, Monica Cazares, for Petitioner.

No appearance for Respondent.

Jean-Rene Basle, County Counsel, and Dawn M. Messer, Deputy County Counsel, for Real Party in Interest.

Petitioner C.G. (Mother) seeks review of an order of the superior court terminating reunification services and ordering that a hearing be held pursuant to Welfare and Institutions Code section 366.26.[1] We deny the petition.

STATEMENT OF FACTS

The minors A.G. and J.G. came to the attention of San Bernardino County Children and Family Services (CFS) when mother "rolled" her vehicle while under the influence of alcohol on March 15, 2015. The children were inside the vehicle, but, fortunately, were not seriously injured. Officers responding to the accident took the minors into custody; eventually J.G. (Father) showed up to collect them, but he too was intoxicated and CFS was called instead. Mother was arrested and incarcerated. On April 9, 2014, at an uncontested jurisdictional/dispositional hearing, the court assumed jurisdiction over the minors pursuant to section 300, subdivisions (b) and (g). Reunification services were ordered for both parents and the children were placed with their paternal grandmother.

A status review report was prepared and filed on October 7, 2014. This reflected that Mother had been placed on probation as a result of the driving while intoxicated incident and had been testing "clean" for her probation officer although CFS was concerned that her "drug of choice" was alcohol, which did not remain in the system for

[1] All subsequent statutory references are to the Welfare and Institutions Code.

very long. Mother had also missed multiple drug screening appointments arranged by CFS.

Mother enrolled in a substance abuse program and was participating in anger management and counseling. Father, however, was not participating, which caused CFS to decline to place the family on "family maintenance." Both Mother and Father visited frequently and the foster mother expressed no concerns about the visits. At a hearing on October 9, 2014, the court continued reunification services to both parents.

By the time of the next status review, it was reported that Mother had completed individual counseling as well as parenting and anger management classes. The social worker described Mother as "cooperative" and "very motivated." She was having unsupervised visits with the children. She had also completed a substance abuse program and was testing negative for prohibited substances. However, it was learned that she had a warrant for her arrest apparently stemming from her failure to surrender for jail time imposed as a condition of her probation.[2] For this reason the social worker recommended against returning the children to Mother's care until this situation was cleared up.

The court retained jurisdiction and continued services on March 26, 2015.[3]

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[2] Mother later testified that the warrant was prompted by her "fail[ure] to sign up for the DUI program by a certain date."

[3] Although Mother remained in contact with him, Father did not participate in services.

However, shortly thereafter (the social worker's report is not entirely clear), Mother was arrested in Oceanside, apparently under the influence of alcohol. This resulted in a revocation and reinstatement of probation, with the order that she serve 240 days in jail with credit for 62 days served. As a result, the final social worker's report recommended that services be terminated due to the imminent expiration of the statutory period.

Mother testified at the 18-month review hearing. She admitted that she had been made aware of the warrant in October 2014 when contacted by her probation officer. She also testified that at the time of her arrest, she had only consumed a couple of beers.[4] She actually served only about 59 additional days and was released on July 8, 2015. She had enrolled for the required DUI class to begin on October 19, 2015, and had also signed up for another counseling program.

Mother further testified that she had terminated her relationship with Father in November 2014[5] but also admitted that in April 2015, she had been drinking with him at the Oceanside motel and that he had stayed the night. Mother had no good explanation for why she had failed to address the issue of the warrant in the six months between the warning from her probation officer and her eventual arrest. She also admitted that she

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[4] It remains unclear how Mother came to the attention of law enforcement at that time. She had rented the motel room in her own name and this apparently triggered a specific approach from law enforcement with respect to the San Bernardino warrant.

[5] When she apparently had a third child. The indication is that she allowed, or authorized, a third party to care for this child under a guardianship, although the court did not allow the facts to be established, citing Evidence Code section 352.

had failed to enroll in an aftercare program relating to alcohol abuse because the designated program did not offer child care and by then she had given birth to the third child. In addition, she was busy visiting the subject minors on weekends.

Mother further explained on cross-examination that the reason she contacted Father was that she needed a ride to Oceanside. She admitted that she had learned how to deal with the desire to drink and had thought about calling her sponsor, but did not because "I wasn't really thinking." She also explained that she was feeling "vulnerable" at the time because her son had asked her about coming home at the most recent court hearing and she was anxious about the warrant. She testified that at the time of her arrest, she had not made arrangements for the care of her infant, so she was not yet prepared to turn herself in.

The parties then argued the applicability of section 366.22, subdivision (b), which in narrowly limited circumstances allows services to be extended for an additional six months past the 18-month date.[6] The trial court eventually concluded that Mother had failed to establish that additional services would benefit the minors, and terminated

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[6] "If . . . the court determines by clear and convincing evidence that the best interests of the child would be met by the provision of additional reunification services to a parent . . . who is making significant and consistent progress in a court-ordered residential substance abuse treatment program, or a parent recently discharged from incarceration . . . and making significant and consistent progress in establishing a safe home for the child's return, the court may continue the case for up to six months . . . ." (§ 366.22, subd. (b).) In order to do so, the court must find that the parent has made "significant and consistent progress in the prior 18 months in resolving problems that led to the child's removal" (§ 366.22, subd. (b)(2)) and that the parent has demonstrated the ability to "complete a treatment plan postdischarge from incarceration . . . . " (§ 366.22, subd. (b)(3).)

services. It was particularly swayed by what it characterized as Mother's "sluggish" restart after her release from custody in July.

Mother filed this petition as authorized by section 366.26, subdivision (l)(1). She argues that the trial court abused its discretion in denying services under the above provision. We disagree.

DISCUSSION

We review the trial court's decision not to extend additional services for abuse of discretion. (*Andrea L. v. Superior Court* (1998) 64 Cal.App.4th 1377, 1388; *City of San Diego v. Board of Trustees of California State University* (2015) 61 Cal.4th 945, 956.) We apply the substantial evidence standard in reviewing express or implied factual determinations underlying the decision. (*In re Anthony B.* (2015) 239 Cal.App.4th 389, 395.)

First, we are not even certain that section 366.22, subdivision (b), applies to Mother. She has never been in a "court-ordered residential substance abuse treatment program" (§ 366.22, subd. (b)), and her periods of incarceration have not been extensive enough to have interfered with her attempts to reunify with the minors. In our view it appears that the statute is intended to permit a period of additional services for parents who have been genuinely hampered in completing reunification and/or maintaining a close relationship with a child. That was not the case with Mother.

However, even if the court did have the power to exceed the 18-month limit and order additional services, Mother did not satisfy the conditions of the statute. She had not made "significant and consistent" progress. (§ 366.22, subd. (b).) We agree that Mother met many of her goals and was very close to obtaining custody of the minors in the spring of 2015, the only bar at that time being her outstanding warrant. However, we are compelled to note that Mother had been aware of the warrant, and the need to contact her probation officer, for several months. Even after she failed to regain custody for this reason, Mother still did not take action to clear up the warrant, and her reasons for this, as set out above, were highly unsatisfactory. She then associated with Father despite the latter's failure to address his own problems with alcohol, with the predictable result that Mother began drinking again. Thus, by the time of the 18-month review hearing, her progress in alcohol awareness and abstinence was *not* "consistent."

We also agree that Mother did not act with optimum speed in demonstrating her commitment to satisfying the requirements of her reunification plan once she was released from her brief period of incarceration in July. It must be stressed that Mother's use of alcohol has been shown to seriously and perilously impair her judgment, as the children were fortunate to have escaped serious injury or death when she crashed her vehicle. Her continued association with Father also indicates that she was not yet able to put into practice what she had learned about alcohol and alcohol abusers.

Given this, and the uncertain prospects for Mother's future success, the trial court could not have properly found by "clear and convincing evidence" (§ 366.22) that the minors' best interest would be served by providing Mother with additional services.[7]

DISPOSITION

The petition is denied.

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McKINSTER
J.

We concur:

RAMIREZ
P. J.

HOLLENHORST
J.

[7] We note that the apparent plan for the minors is for them to be maintained with the paternal grandmother under a guardianship. Thus, if Mother continues to maintain sobriety and make good lifestyle choices, she may in the future file a motion for modification under section 388 or otherwise seek to regain custody.